IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 27TH APRIL 2007 / 7TH VAISAKHA 1929

WP(C).No. 27064 of 2006(V)

PETITIONER:

BHARTI AIRTEL LIMITED,
"BHARTI TOWERS", S.A.ROAD, KADAVANTHRA,
KOCHI-682 020, REPRESENTED BY ITS HEAD-LEGAL,
SRI. P.JAYABAL MENON.

BY ADV. SRI.SANTHOSH MATHEW,
SRI.SATHISH NINAN.

RESPONDENTS:

1. **CHENGAMANAD GRAMA PANCHAYAT,**
   PUDUVASSERY, NEDUMBASSERY P.O.,
   ERNAKULAM DISTRICT - 683 585, REPRESENTED BY
   ITS SECRETARY.

2. **SUB INSPECTOR OF POLICE,**
   CHENGAMANAD POLICE STATION, CHENGAMANAD.

***ADDL.R3. SIVASANKARAN.E.G.,**
S/O. GOPALA PILLAI, PULINCHOTTIL HOUSE,
P.O. CHENGAMANAD.

***IMPLEADED AS ADDL. R3. VIDE ORDER DTD. 31/10/2006**
IN I.A. NO. 15091/2006.

BY ADV. SRI.P.CHANDRASEKHAR,
SRI.C.M.SURESH BABU,
GOVT. PLEADER SRI. MATHEW G. VADAKKEL.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/04/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 27064 OF 2006

Dated this the 27th day of April, 2007

JUDGMENT

M/s.Bharti Airtel Ltd., a Mobile Telephone Company has filed this Writ Petition challenging Ext.P1 order of the 1st respondent-Chengamanad Panchayat directing the petitioner to stop the construction of the telecommunication tower which was being constructed by the petitioner on the basis of a no objection certificate which had been issued earlier by the Panchayat. The 1st respondent is the Chengamanad Panchayat and 2nd respondent is the Sub Inspector of Police, Chengamanad. One Sri.E.G. Sivasankaran, a resident of the Chengamanad Panchayat who is residing very near to the proposed Base Station got himself impleaded as additional 3rd respondent in the Writ Petition.

2. Petitioner-Company submits that it has been granted licence by the Department of Telecommunications, Government of India for conducting Cellular Mobile operations in various states including Kerala and that by making use of standard equipments manufactured by reputed companies, nearly 1000 telephone towers have already been put up by the petitioner throughout the State of Kerala for enhancing network coverage. With the objective of improving the coverage in the

Ernakulam District, the petitioner applied for a building permit from the Chengamanad Grama Panchayat for the Construction of a tower in Survey No.170/4B,E of Chengamanad Village. The Secretary of the Panchayat issued NOC for the construction of the tower. Steps were taken by the petitioner for the construction of telecommunication tower and necessary construction materials were also collected at the building site. But at that juncture on the basis of a complaint preferred by the local residents that installation of the tower will result in health hazards to them, the Panchayat Committee took a decision on 11.10.06 to suspend the building permit. Ext.P1 is copy of the communication issued in this regard to the petitioner. Petitioner impugns Ext.P1 on various grounds. Petitioner relies on Ext.P2 interim order passed by this Court in WP(C) No.22063 of 2006 by which the operation of a similar order passed by the Changaroth Grama Panchayat was stayed by this Court and the police was directed to give protection to the petitioner(the very same petitioner) to go ahead with the construction of the tower. Petitioner also relies on Ext.P3 judgment of this Court holding in similar situations that since relevant provisions in Kerala Municipality Building Rules, 1999 deals with telecommunication towers takes care of all relevant aspects including security aspect, objection from the local resident will not be relevant. The petitioner prays that Ext.P1 be

quashed and that the respondent Panchayat be directed to permit the petitioner to construct telecommunication tower without any obstruction from the residents of the locality.

3. The 1st respondent Panchayat has filed a counter affidavit claiming that though no specific provision is quoted in Ext.P1, Ext.P1 is actually issued under Section 235(o) of the Panchayat Raj Act. It is conceded that the Panchayat had granted permission to the petitioner for constructing telecommunication tower as per its resolution dt.8.3.06. But later the Panchayat received letter dt.27.3.06 of the Deputy Director of Panchayats requiring the Panchayat to submit a report to him after examining the mass petition submitted by the local people which has been annexed to that letter. Ext.R1(a) is copy of the Deputy Director's letter. Ext.R1(b) is copy of the mass petition. Counter submits that the local people submitted a petition to the District Collector and other officials against the tower constructed. The local people are very much anxious about the health hazards to the people, due to the radiation from the telecommunication tower. Being a local authority representing the people, the Panchayat has a statutory duty to ensure that the health of the people of the locality is not jeopardised. This was why Ext.P1 was issued. Ext.P1 directs the petitioner to stop the construction of the telecommunication tower temporarily and final decision in this matter will

be taken only after affording an opportunity to the petitioner and the representatives of the local people of being heard. Section 235(o) of the Panchayat Raj Act, 1994 provides that the Secretary of the Panchayat may, at any time stop the constriction of the building if the construction is dangerous to human life.

4. The 3rd respondent has filed a more serious counter affidavit. It is contended there in that telecommunication tower is a building within the meaning of Section 2(iii) of the Kerala Panchayt Raj Act, 1994. Section 235B of the Act stipulates that no part of land shall be used as site for the construction of a building and no building shall be constructed otherwise than in accordance with the provisions of the Act. Section 235F provides that it is necessary that a person desirous of putting up a building shall apply to the Panchayat Secretary in writing, together with a site plan of the land for approval of the site and an application in writing together with a ground plan, elevation and sections of the building and specification of the work for permission to execute the work is necessary. Sub Section 2 of Section 235(f) provides that every document furnished under Sub Section (1) shall contain particulars prescribed under the rules. The counter affidavit refers to Section 235(g) of the Panchayat Raj Act and submits that the Secretary shall not grant permission for constructing a building unless and until he

has approved the site plan on an application made under Section 235(f). It is contended that Section 235(h) provides that construction shall not be commenced until Secretary has granted permission for execution of work. Reference is made to Section 235(l) which enumerates the grounds on which approval for building site can be denied and Section 235(o) which empowers the Secretary of the Panchayat to stop the construction at any time, if the work in progress is dangerous to human life. Section 235(w) which empowers demolition of unlawful construction is also referred to. It is contended that the petitioner started the work without getting site plan approved and without obtaining a building permit as per the provisions of the Act. It is contended that the Act does not contemplate any NOCs but what is mandatory is to get site approval and building permits. The authority to grant site approval and to grant building permit is the Secretary of the Panchayat and not the Council. But as per Ext.R3(a), NOC was given to the petitioner by the Council and not by the Secretary. Ext.P1, it is contended was issued under misconception of law. The petitioner is not entitled to commence or continue the construction of the tower on the strength of NOC. The counter affidavit goes on to deny the contention of the petitioner that installation or energisation of the telecommunication tower will not cause adverse effects. It is contended that scientific studies have revealed

that serious health problems such as increased cell growth of brain cancer cells; increased break in double and single stranded DNA; change in sleep pattern; childhood leukemia; Neurological changes including blood-brain-barrier; decreased memory; increased blood pressure and damage to eye cells are likely to occur on account of radiation emanating from telecommunication towers. It is then contended that the telecommunication tower which is sought to be installed by the petitioner is on a low lying land very near to residential houses including that of the 3rd respondent. Unlike the telecommunication towers installed by other mobile operators which are at isolated places far away from residential houses or at considerable height on the top of three or four storeyed buildings. Ext.R3(b) photographs are relied on by the 3rd respondent.

Even though very elaborate submissions were addressed before me by learned counsel for various parties, particularly Sri.Santhosh Mathew, counsel for the petitioner and Sri.P.Chandasekhar, counsel for the party respondent and my attention was drawn to various judgments including the judgment of this Court in **Reliance Infocom v. Chemonchery Grama Panchayat** (2004 (6) KLT 695) and that of Supre me Court in **Vellore Citizens' Welfare Forum v. Union of India** [(1996) 5 SCC 647] and to various provisions of law such as Section

235 B, G, the statutory definition of the term building, Section 233, 234, 140(a) of the Municipal Building Rules, I am not inclined to go into the merits of the matter. Ext.P1 is obviously not preceded by a hearing with notice to the petitioner, I quash Ext.P1 on that reason alone. The Writ Petition accordingly will stand allowed. Ext.P1 is quashed. The 1st respondent-Panchayat is directed to take a fresh decision on the issue covered by Ext.P1 at the earliest with notice to the petitioner and also the additional 3rd respondent. The parties shall be permitted to submit written arguments as well as copies of the judicial precedents on which they want the Panchayat to rely. Petitioner is permitted to produce copy of the affidavit submitted by the Atomic Energy Regulatory Board before the Bombay High Court and also copy of the W.H.O.'s report in the matter. The 3rd respondent can produce equally and authentic material, if any, for substantiating its contentions. The Panchayat will take a decision as directed above at any rate within one month of receiving copy of the argument notes and copies of decisions and materials from the petitioner and the 3rd respondent.

Allowed by way of Remittance.

PIUS C. KURIAKOSE, JUDGE

btt